

§ 108A-70.12. Liability for certain acts; damages; effect of repayment.

(a) **Liability for Certain Acts.** – It shall be unlawful for any provider of medical assistance under the Medical Assistance Program to:

- (1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or approval; or
- (2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this section is a separate violation.

(b) **Damages.** –

- (1) Except as provided in subdivision (2) of this subsection, a court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) plus three times the amount of damages which the Medicaid Assistance Program sustained because of the act of the provider.
- (2) A court may assess a penalty of not less than two times the amount of damages which the Medical Assistance Program sustains because of the act of the provider if a court finds that:
 - a. The provider committing a violation of this section furnished officials of the State responsible for investigating false claims violations with all information known to the provider about the violation within 30 days after the date the provider first obtained the information;
 - b. The provider fully cooperated with any State investigation of the violation; and
 - c. At the time the provider furnished the State with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the provider did not have actual knowledge of the existence of an investigation into the violation.
- (3) In addition to the damages and penalty assessed by the court pursuant to subdivision (1) or (2) of this subsection, a provider violating this section shall also be liable for the costs of a civil action brought to recover any penalty or damages, interest on the damages at the maximum legal rate in effect on the date the payment was made to the provider for the period from the date upon which payment was made to the provider to the date upon which repayment is made by the provider to the Medical Assistance Program, and the costs of the investigation.
- (4) As applied to providers that are subject to certification review by the Division of Health Service Regulation, a violation of Medicaid provider certification standards in providing a service, good, or accommodation shall not be considered an independent basis for liability under this Act. However, liability may be imposed if a false or fraudulent claim is presented as set forth in subsection (a) of this section in connection with that service, good, or accommodation.

(c) **Effect of Repayment.** – Intent to repay or repayment of any amounts obtained by a provider as a result of any acts described in subsection (a) of this section shall not be a defense

to or grounds for dismissal of an action brought pursuant to this section. However, a court may consider any repayment in mitigation of the amount of any penalties assessed. (1997-338, s. 1; 2007-182, s. 1.)